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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

-oOo-

9 UNITED STATES OF AMERICA, )

2:06-cr-309-RJC

10 Plaintiff, )

11 v. )

12 CARL CHESTER, )

13 Defendant. )  
14

15 **GOVERNMENT'S APPLICATION FOR ORDER**  
16 **THAT ATTORNEY CLIENT PRIVILEGE IS WAIVED**

17 COMES NOW, the United States of America by and through its attorneys,  
18 Daniel G. Bogden, United States Attorney, and Camille W. Damm, Assistant United States  
19 Attorney, and respectfully requests this court enter an order of waiver of the attorney-client  
20 privilege in this case.

21 This order is sought for the following reasons:

22 1. Defendant has filed a 28 U.S.C. § 2255 motion to vacate, set aside or  
23 correct sentence by a person in federal custody, alleging ineffective assistance of counsel,  
24 to which this court has ordered a response.  
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26 . . .

1           2.       Information from Defendant's former trial counsel, Donald J. Green,  
2 Esq., and sentencing counsel, Mark B. Bailus, Esq., is necessary in order to respond to  
3 Defendant's allegations.

4           3.       We request this court's order that the attorney-client privilege is waived  
5 as to all contentions raised in Defendant's Section 2255 Motion, that all material and  
6 information related thereto be divulged to the government, and that Mr. Green and Mr.  
7 Bailus provide affidavits containing the same forthwith but not later than February 7, 2011.

8           4.       The voluntary disclosure by a defendant of privileged attorney  
9 communications "constitutes waiver of the privilege as to all other such communications  
10 on the same subject." *Weil v. Investment/Indicators, Research & Management*, 647 F.2d  
11 18, 24 (9<sup>th</sup> Cir. 1981). *See also, United States v. Zolin*, 809 F.2d 1411, 1415-16 (9<sup>th</sup> Cir.  
12 1987); *Clady v. County of Los Angeles*, 770 F.2d, 1421, 1433 (9<sup>th</sup> Cir. 1985).

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14           Even when a party does not explicitly disclose the content of  
15 an attorney-client communication, he may waive the privilege  
16 implicitly. A person cannot always claim that he relied on  
17 counsel, while protecting what was said between them from  
18 disclosure. As we have said: "The privilege which protects  
19 attorney-client communications may not be used both as a  
20 sword and a shield. Where a party raises a claim which in  
21 fairness requires disclosure of the protected communication,  
22 the privilege may be implicitly waived." (Citations omitted.)

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*United States v. Ortland*, 109 F.3d 539, 543 (9<sup>th</sup> Cir. 1997).

27           **WHEREFORE**, based on the foregoing, it is respectfully requested that this court  
28 enter an order that the attorney-client privilege in this case as to Defendant Carl Chester  
29 is waived, and that Donald J. Green, Esq. and Mark B. Bailus, Esq., forthwith, but not later

1 than February 7, 2011, provide the government with all materials and information related  
2 to the issues in Defendant's Section 2255 Motion.

3 **DATED:** this 5<sup>th</sup> th day of January, 2011.

4 Respectfully submitted,

5 DANIEL G. BOGDEN  
6 United States Attorney

7 /S/ Camille W. Damm  
8 CAMILLE W. DAMM  
9 Assistant United States Attorney

CERTIFICATE OF SERVICE

UNITED STATES OF AMERICA, )  
 ) 2:06-cr-309-RJC  
Plaintiff, )  
 )  
v. )  
 )  
CARL CHESTER, )  
 )  
Defendant. )  
\_\_\_\_\_ )

The undersigned hereby certifies that she is an employee in the United States Attorney's Office, and is a person of such age and discretion as to be competent to serve papers.

That on January 5, 2011, she served a copy of **GOVERNMENT'S APPLICATION FOR ORDER THAT ATTORNEY CLIENT PRIVILEGE IS WAIVED** by electronic mail.

/s/ Terrie Murray  
TERRIE MURRAY  
Legal Assistant

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

**-oOo-**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CARL CHESTER,

Defendant.

2:06-cr-309-RJC

ORDER

Based on the pending application of the government, and good cause appearing therefor,

IT IS THEREFORE ORDERED that the attorney-client privilege in 2:06-cr-3:09 is waived, and that defense counsel Donald J. Green, Esq. and Mark B. Bailus, Esq., shall forthwith, but not later than February 7, 2011, provide the government with an affidavit containing all materials and information relating to matters put at issue in Defendant Carl Chester's Section 2255 Motion.

DATED: this 11<sup>th</sup> day of January 2011.

  
UNITED STATES DISTRICT JUDGE